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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,812	03/18/2004	Thomas D. Smith III	4056-003 (7242.001)	4845
30589 7590 05/28/2009 DUNLAP CODDING, P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113				
EXAMINER				
HAYES, BRET C				
ART UNIT		PAPER NUMBER		
3641				
MAIL DATE		DELIVERY MODE		
05/28/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/803,812

**Applicant(s)**

SMITH, THOMAS D.

**Examiner**

BRET HAYES

**Art Unit**

3641

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 38-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 and 38-40 is/are allowed.
- 6) ☒ Claim(s) 41-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: there is a child continuation of this reissue (i.e., 11/977,180). The specification needs to be amended to include a cross-reference to the other reissue. See CFR 1.177(a) and MPEP 1451.

Appropriate correction is required.

### *35 U.S.C. 251*

2. Claims 41 – 48 are rejected under 35 U.S.C. 251 as being improperly broadened in a reissue application. A claim is broader in scope than the original claims if it contains within its scope any conceivable product or process which would have infringed the original patent. A claim is broadened if it is broader in any one respect even though it may be narrower in other respects.

3. In the appeal brief, it was argued that “the prior art reticles do not use the combination of components utilized by applicant and defined in the claims.” Since a broad general allegation of patentability can not be relied upon to determine what has been surrendered by the applicant, we look for any specific limitations that were argued/referenced by the applicant. In the appeal brief, applicant highlights paragraphs a) through c) on page 9 of the appeal brief. Among the components of the claim are “horizontal range-marker hairlines....**disposed below said center horizontal hairline in vertically bisected relationship with said center vertical hairline**” (emphasis added). Claim 41 does not include the bolded limitation set forth above (see paragraph “c” on page 9 of appeal brief of the patent), and accordingly is guilty of recapture.

4. For newly added claims that are purported to be directed to the error, the difference between the new claims and the original claims must be pointed out (similar to claims 11 and 17 in the first preliminary amendment). Accordingly, the differences between claim 41 and the original patent claims must be pointed out. In the remarks filed 10/31/08, applicant has merely indicated that claim 41 “incorporates and combines the limitations of originally issued claims 1, 9 and 10”. This is not exactly true; there are some limitations or parts of limitations of claims 1, 9 or 10 that have been eliminated.

#### *Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (571) 272 – 6902 or email address [bret.hayes@uspto.gov](mailto:bret.hayes@uspto.gov), which is preferred.

Art Unit: 3641

The examiner can normally be reached Monday through Friday from 5:30 am to 2:00 pm,  
Eastern Standard Time.

The Central FAX Number is **571-273-8300**.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's  
supervisor, Michael Carone, can be reached at (571) 272 – 6873.

/Bret Hayes/

Primary Examiner, Art Unit 3641

28-May-09